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115 CMR 6.00: ELIGIBILITY, INDIVIDUAL SUPPORT PLANNING AND APPEALS

Section

ELIGIBILITY FOR SUPPORTS PROVIDED, PURCHASED OR  
ARRANGED BY THE DEPARTMENT OF MENTAL RETARDATION

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6.01: Scope and Purpose

(1) Scope.

- (a) 115 CMR 6.01 through 6.09 applies to applicants for supports provided, purchased, or arranged by the Department of Mental Retardation.

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(b) No person may receive supports provided, purchased, or arranged by the Department (other than emergency supports and information and referral services as noted in 115 CMR 6.09) unless the person is determined eligible for such supports under 115 CMR 6.01 through 6.09.

(2) Purpose. The purpose of 115 CMR 6.01 through 6.09 is to set forth the standards and procedures under which the Department determines an applicant's eligibility for supports and determines the applicant's priority to receive supports purchased, provided, or arranged by the Department. Unless otherwise specified in 115 CMR, provision of supports provided, purchased or arranged for an individual is subject to appropriation. M.G.L. c. 19B, § 1.

6.02: Application Procedures

(1) Application.

(a) Who may apply. Any person may apply for supports provided, purchased, or arranged by the Department either on his or her own behalf or on behalf of another.

(b) Where application is made. An application for supports provided, purchased, or arranged by the Department shall be made by providing a completed application form to any Department Office. Application forms may be obtained from any Department Office or Provider or online by accessing the Department through its internet address at [www.mass.gov/dmr](http://www.mass.gov/dmr). The Regional Eligibility Team for the Department's geographic region in which the applicant resides shall make the determination of eligibility for supports in all cases.

(c) Re-application. Applications for individuals who previously have applied for or have been determined to be ineligible for services shall be considered to be new applications.

1. A person previously found ineligible for supports may re-apply after one year has elapsed since the determination of ineligibility and if the application is supported by new or additional relevant information not previously submitted to the Department. The Department shall determine whether the newly submitted information is sufficient to warrant a re-determination.
2. The family of a child who experiences the onset of a developmental disability that is distinct from the original delay or disability prompting the initial application may apply at any time prior to the child reaching age 18.
3. A person who was determined eligible for Department services who has not received any service for three or more years and has

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been designated as “inactive” in accordance with the Department’s case status policy, may re-apply for eligibility.

4. Individuals who were determined eligible for services under 115 CMR 6.06 may re-apply for adult services under 6.04 upon achieving age 17.5 or older.

(2) Intake. Following the receipt of an application, the Regional Eligibility Team shall inform the applicant regarding the following:

- (a) the criteria for eligibility for Department supports;
- (b) the procedures for eligibility determination;
- (c) the system of prioritization for receipt of supports based upon need, funding and availability;
- (d) the authority of the Department to charge for supports, including costs associated with a determination of eligibility;
- (e) the authority of the Department to require information about the applicant's and his or her family's needs, income, legal status, and resources before providing, purchasing, or arranging supports;
- (f) the right of the applicant to appeal a determination of ineligibility under 115 CMR 6.30 through 6.34; and
- (g) the person's obligation, as a condition of eligibility, to consent to the Department obtaining information from current and previous service providers and other state agencies.

(3) Eligibility Determination Process. Eligibility shall be determined by the Regional Eligibility Team based on an analysis of the information submitted in support of the application.

(a) Regional Eligibility Teams. Regional Eligibility Teams may be composed of any number of members as assigned by the Department. Each team must have at least one member with the following professional credentials: licensed doctoral level psychologist, masters degree in social work, and Department eligibility specialist.

(b) Determination. The Department shall determine whether the applicant (1) is domiciled in Massachusetts and (2) whether the person is a person with mental retardation as defined in 115 CMR 2.01. The eligibility determination process shall include an interview with the applicant and, if feasible, other significant persons in his or her life. The determination of eligibility shall be made pursuant to 115 CMR 6.04 through 6.06;

(c) With respect to applicants who meet the eligibility criteria established in 115 CMR 6.04 through 6.06, the information provided in support of the application will serve as the basis for Area Office development of a support plan and the determination of the individual’s priority to receive supports and will include a determination of the general types of supports that are adequate, most appropriate and least restrictive to meet the applicant's needs and that promote as much as

possible his or her independence, productivity, and inclusion in the community.

6.03: Eligibility Letter

(1) Distribution.

(a )Upon completion of the eligibility determination, the Regional Eligibility Team shall prepare and mail a letter to the applicant, the applicant's guardian, if any, and the Area Director or his or her designee notifying the applicant and/or his guardian of the decision and the basis therefore.

1. Denial of eligibility based upon domicile.

In cases that the Regional Eligibility Team determines that a person is not domiciled in Massachusetts, it shall notify the applicant, the applicant's guardian, if any, in writing that the person is not eligible for services based upon domicile. The Regional Eligibility Team shall not proceed to determine whether the person is a person with mental retardation as defined in 115 CMR 2.01 or an eligible child under 115 CMR 6.06.

2. Determination based upon mental retardation.

In cases that the Regional Eligibility Team determines that a person is domiciled in Massachusetts, it shall notify the applicant, the applicant's guardian, if any, and the Area Director or his or her designee in writing of the eligibility determination based upon mental retardation as defined in 115 CMR 2.01.

(2) Contents. The letter shall contain the following findings and statements:

- (a) the eligibility status of the applicant;
- (b) if not eligible, the specific reasons for the determination of ineligibility;
- (c) the identification of the applicant's area of service if determination is based upon mental retardation;
- (d) the names of the Regional Eligibility Team staff that can be contacted for additional information or problem resolution;
- (e) a statement that the applicant has the right to appeal any finding of the eligibility letter, within 30 days of receipt pursuant to 115 CMR 6.30 through 6.32;

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- (f) a statement that supports cannot be initiated without the agreement of the applicant or guardian, and the Department; and
- (g) a statement that the applicant or guardian shall have, an opportunity to meet with a Regional Eligibility Team designee for an explanation of the letter and for an opportunity to discuss any of its findings, if requested within 15 days of the receipt of the report.

(3) Children. For children from infancy to 17 years of age, the Regional Eligibility Team will issue an eligibility letter to the applicant's parents or guardians, within 60 days from the date of its receipt of a complete application form.

(4) Adults. For persons 18 years of age and older, the Regional Eligibility Team will issue an eligibility letter to the applicant, family, or guardian within 60 days from the date of its receipt of a complete application form.

(5) Deferral of Eligibility Determination.

(a) Deferral. In cases that the information submitted in support of an application is insufficient for the Regional Eligibility Team to determine eligibility, the Regional Eligibility Team may defer consideration of the application for up to an additional 60 days in order to provide the applicant with time to obtain and submit the requested information and documentation which may include new or additional testing or assessments.

(b) Notification. The Regional Eligibility Team shall notify the person, family, or guardian that the application has been deferred, the information and documentation that the Regional Eligibility Team requires in order to determine eligibility, and the deadline for submission of requested information and documentation.

(c) In the event that the person, family, or guardian does not submit the requested information and documentation by the deadline provided in the notification of deferral letter, the Regional Eligibility Team shall determine eligibility based upon the information in its possession.

#### 6.04: General Eligibility

(1) Persons who are 18 years of age or older are eligible for supports provided, purchased, or arranged by the Department if the person:

- (a) is domiciled in the Commonwealth and
- (b) is a person with mental retardation as defined in 115 CMR 2.01.

(2) Domicile.

(a) For purposes of 115 CMR 6.04(1)(a), a person shall be considered to be domiciled in Massachusetts if he or she resides in Massachusetts with the intention to remain here permanently or for an indefinite period.

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(b) There shall be a presumption that the following individuals are not domiciled in Massachusetts:

1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in Massachusetts and was not so domiciled at the time of the person's placement;
3. Persons, other than those covered under 115 CMR 6.04(2)(b)1 or 2, ages 18 through 21, who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.

(c) In cases that the Regional Eligibility Team determines that a person is not domiciled in Massachusetts, the Department shall deny eligibility based upon domicile and shall so notify the person. The Regional Eligibility Team shall not proceed to determine whether the person is a person with mental retardation as defined in 115 CMR 2.01.

(d) In the event that a person prevails in an appeal of a determination that he or she was not a Massachusetts domiciliary, the Department shall reconsider his or her application without regard to 115 CMR 6.08(1).

6.05: Special Eligibility

(1) Any person identified in the Class Member Identification List as of April 30, 1993, regardless of current place of residence, or any person who, on or after April 30, 1993 has resided at Monson Developmental Center, Fernald Developmental Center, Wrentham Developmental Center, Templeton Developmental Center or Dever Developmental Center during more than 30 consecutive days or for more than 60 days during any 12-month period shall have special eligibility for services provided, purchased, or arranged by the Department.

(2) A person with special eligibility is entitled to:

- (a) an assessment of eligibility;
- (b) a designation of area of service;
- (c) assignment of a service coordinator;
- (d) an Individual Support Plan and substantial provision of the services or supports recommended in his or her Individual Support Plan for so long as such services or supports are needed and authorized by the individual and his or her guardians; and

(e) the least restrictive, most typical, appropriate residential environment, together with the most appropriate treatment, training and support services suited to that person's individual needs.

6.06: Child Eligibility for Family Supports

(1) Persons who are younger than 18 years of age may be eligible for family supports provided, purchased, or arranged by the Department if the person:

- (a) is domiciled in the Commonwealth and
- (b) has a verified diagnosis of mental retardation or a closely related developmental condition, or with respect to persons from birth to age five a developmental disability. For purposes of 6.06(1)(b) developmental disability means a substantial developmental delay or specific congenital or acquired condition with a high probability of resulting in a developmental disability if services are not provided, and
- (c) demonstrates severe functional impairments as defined in 2.01.

(2) Domicile.

(a) For the purposes of 115 CMR 6.06(1), a person younger than 18 years who resides in Massachusetts shall be presumed to be domiciled in Massachusetts if:

- 1. One or both of the person's parents are domiciled in Massachusetts, unless the parent having sole legal custody is not domiciled in Massachusetts;
- 2. Legal custody of the person has been awarded by a court to a guardian who is domiciled in Massachusetts or to the Commonwealth or any agency or division thereof; or
- 3. The person is emancipated and is residing in Massachusetts with the intent to remain in the state permanently or for an indefinite period of time.

(b) For the purposes of 6.06(1), a person younger than 18 years there shall be a presumption that the following individuals are not domiciled in Massachusetts:

- 1. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth, which residence was arranged or is being funded by another State, including any agency or political subdivision thereof and any entity under contract with the other State for such purposes;
- 2. Persons who reside in a home or other setting subject to licensure or regulation by the Commonwealth which residence was arranged by a parent, guardian, or family member who is not domiciled in

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Massachusetts and was not so domiciled at the time of the person's placement;

3. Persons, other than those covered under 115 CMR 6.04(2)(b)1 or 2, ages 18 through 21, who reside in a residential special education program and whose parent or guardian is not domiciled in Massachusetts.

(3) An individual may file an application for General Eligibility under 115 CMR 6.04 when he or she 18 years of age.

6.07: Prioritization for Supports

(1) Priority Determination.

(a) Except as to individuals who have special eligibility pursuant to 115 CMR 6.05, all supports, including assessments, planning and the development and implementation of Individual Service Plans, are subject to the availability of resources. The Area Director shall determine priority for supports on the basis of criteria set forth in 115 CMR 6.07

(b) Assessments

1) The determination of need for supports shall be based upon an assessment of the individual's functional limitation(s), cognitive impairment, medical needs and behavioral needs as well as generic and family resources available to meet the individual's needs. The Department shall, in its sole discretion, determine which clinical assessments it deems necessary to determine the individual's need for all categories of requested supports as well as the qualifications needed to administer the assessments. The Department shall conduct such assessments in accordance with the standards set forth in 115 C.M.R. 6.22.

2) Assessment(s) shall be completed by the Intake and Eligibility Teams, in consultation with the Area Offices, upon an individual's application for DMR services for those who meet the eligibility requirements. Additional assessments may be requested thereafter upon a significant change in the individual's functioning or in the generic or family resources available to meet the individual's needs.

(c) Notification. The Area Office will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the person's priority to receive services from the Department, the category and intensity of supports available, and the right to appeal the priority assigned within 30 days of being notified. The notice given under this section shall clearly state the reason for the prioritization decision.

(2) Prioritization for Supports to Children and Families.



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(a) The Department seeks to provide certain supports to the families of children with developmental disabilities to enable the family to stay together and to be contributing members of their communities. These supports are intended to assist, not to replace or substitute for, the child's family. The responsibility to provide a home and parental care and guidance rests with the child's parents or, in the event of their absence or incapacity, with the public agency responsible for ensuring the care and protection of children generally, *i.e.*, the Department of Social Services or its successor.

(b) Priority for the allocation of available supports provided, purchased or arranged by the Department shall be determined by the Area Director, based on the severity of the child's and family's needs. The following priorities will apply to individuals who are younger than 18 years of age and to individuals ages 18 through 21 who are in the care or custody of, committed to, subject to court-ordered supervision of, or eligible for or receiving 24-hour residential services from or through another Massachusetts public agency, including, but not limited to the Department of Social Services, the Department of Youth Services, the Department of Mental Health, the Department of Public Health, and state or local education agencies; provided, however, that in no case shall the Department provide residential supports to children younger than 18 years of age or to individuals ages 18 through 21 years of age and eligible for or receiving residential services from a local educational authority, local school district, or any other public agency. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more disability-related needs which, if not met, is likely to result in serious or immediate threat of harm to the child or others and the child is not otherwise eligible for the support(s) required to meet such needs from another public agency;

2. Second Priority. Provision, purchase or arrangement of supports available through the Department is necessary to meet the needs of the child or his or her family and the child is not otherwise eligible for the support(s) required to meet such needs from another public agency;

3. Third Priority. Provision, purchase or arrangement of supports available through the Department will enhance the family's capacity to meet the needs of its members, or will facilitate or promote the inclusion of the child in community life and the child is not otherwise

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eligible for the support(s) required to meet such needs from another public agency;

(c) Fourth Priority. The child is eligible but is currently in the care or custody of, committed to, subject to court-ordered supervision of or is eligible for or receiving 24-hour residential services through another public agency, including, but not limited to the Department of Social Services, Department of Youth Services, Department of Mental Health, Department of Public Health, and state or local education agencies. If another agency is providing such services to a child who is otherwise eligible for Department supports, the Department will presume that such agency is providing supports which are necessary and sufficient to ensure the appropriateness and adequacy of the child's placement.

(e) Whenever another agency is providing supports or services to the child or family, or a child is eligible to receive supports from another agency, the Area Office shall consider that agency's involvement in determining the severity of the child's and family's needs and their priority for DMR supports.

(3) Prioritization for Adult Services.

(a) The Area Director shall determine priority for supports provided, purchased or arranged by the Department to eligible adults age 18 or older based upon the severity of the individual's needs.

(b) Community Residential Support: For individuals who are determined to need 24-hour community residential supports the following priorities shall apply:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary protect the health or safety of the individual or others;
2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs, to achieve one or more of the desired outcomes identified in his or her Individual Service Plan.

(c) Community Living Supports:

1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary protect the health or safety of the individual or others;
2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs, to achieve one or more of the desired outcomes identified in his or her Individual Service Plan.

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- (d) Supportive Services: For individuals who are determined to need supportive services, the following priorities shall apply:
  - 1. First Priority. Provision, purchase, or arrangement of supports available through the Department is necessary protect the health or safety of the individual or others;
  - 2. Second Priority. Provision, purchase, or arrangement of supports available through the Department is necessary to meet one or more of the individual's needs, to achieve one or more of the desired outcomes identified in his or her Individual Service Plan.

(4) If another Massachusetts public agency, including, but not limited to the Department of Social Services, Department of Youth Services, Department of Mental Health, Department of Public Health, and state or local education agencies is providing services to an eligible individual, the Department may consider that agency's involvement in determining the severity of the individual's need and their priority for DMR supports. In no case shall the Department provide residential supports to individuals who are 18 through 21 years of age and who are eligible for or receiving residential services from local educational authority, local school district, or any other public agency. The failure of an individual to apply for or the voluntary refusal of services that may be available from another public agency and for which an individual is otherwise entitled shall not constitute ineligibility to receive those services for the purpose of establishing priority to receive Department services under 115 CMR 6.07.

6.08: Redetermination of Eligibility and Prioritization

(1) The Department shall have the right to re-determine an individual's eligibility status or priority status after one year has passed since the most recent determination or the individual's circumstances have changed. When such re-determination occurs, the Area Office will notify the person, his or her family, unless the person knowingly objects, the guardian, if any, or other appropriate person of the re-determination, and the right to a fair hearing to appeal within 30 days of being notified of the re-determination. When the re-determination will result in the termination of supports to the individual, the filing of an appeal shall operate as a stay of the determination pending the appeal.

(2) The initial determination of General Eligibility pursuant to 115 CMR 6.04 with respect to individuals previously found eligible pursuant to 6.06 shall be considered a new application under 115 CMR 6.04 rather than redetermination within the meaning of 115 CMR 6.08(1).

(3) Redetermination of eligibility shall not apply to individuals who previously found eligible for supports who have not received services from the Department for a period of three or more years and who have been

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designated as “inactive.” Individuals may file a new application under 115 CMR 6.04.

6.09: Emergency Provision of Supports

- (1) When there is reason to believe that a person has mental retardation or, in the case of a person younger than 18 years of age, is eligible for family supports,, and that the absence of supports creates a serious or immediate threat to the health or safety of the person or others, any Regional or Area Office of the Department may provide or arrange for supports to such person, subject to the consent of the person or guardian, or may take such other action as it considers appropriate and within its legal and programmatic capacity, without prior determination of eligibility under 115 CMR 6.02 through 6.06.
- (2) As soon as practicable, but within 24 hours of the initial provision of emergency supports, the Regional Director or the Area Director shall notify:
  - (a) the guardian of the person, if any and if ascertainable; and
  - (b) family members, friends, or other concerned and relevant persons whether or not named by the person, unless he or she knowingly objects.
- (3) Subject to approval of the Area Director, emergency supports may be provided until such time as eligibility is determined in accordance with 115 CMR 6.02 through 6.06 or until the emergency circumstances end, whichever occurs first.